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OFFICE OF PETITIONS

In re Application of	:	
Zima et al.	:	DECISION ON APPLICATION
Application No. 10/659,620	:	FOR
Filed: September 10, 2003	:	PATENT TERM ADJUSTMENT
Atty Docket No. 80005	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT-PRE-GRANT," filed February 11, 2008. Applicant requests that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from four hundred thirty-eight (438) days to four hundred fifty-nine (459) days.

The application for patent term adjustment is **DISMISSED**.

On November 23, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 438 days. On February 11, 2008, applicant timely¹ submitted the instant application for patent term adjustment. Applicant disputes the reduction pursuant to 1.704(c)(7) of 32 days. Applicant requests removal of the 32-day reduction on the ground that the response filed May 22, 2006 was fully responsive and that the notice of non-compliance was issued in error.

Applicants' argument has been considered, but not found persuasive. Pursuant to 37 CFR § 1.704(c), circumstances that constitute a failure of the applicant to engage in reasonable

¹ PALM records indicate that the Issue Fee payment was received in the Office on February 20, 2008.

efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(7) Submission of a reply having an omission (§1.135(c)), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed;

The record has been reviewed and it has been determined that the response filed May 22, 2006 was properly held to be non-responsive. The Office action of April 13, 2006 included two requirements under 35 USC 121 namely to elect a single disclosed species for prosecution on the merits and a listing of all claims readable thereon, including any claims subsequently added.

As stated by the Notice mailed June 2, 2006, applicant did not submit a complete listing of all of the claims with the May 22, 2006 reply. Petitioner contends since no changes were made to any pending claims, a complete reply was not required. Such argument is not well founded, the April 13, 2006 Office action clearly required a listing of *all claims*. As such, the election was properly considered not fully responsive. Thus, the reduction of 32 days for the delay from the filing of the initial response on May 22, 2006, to the filing of the response including a proper election on June 12, 2006, is warranted.

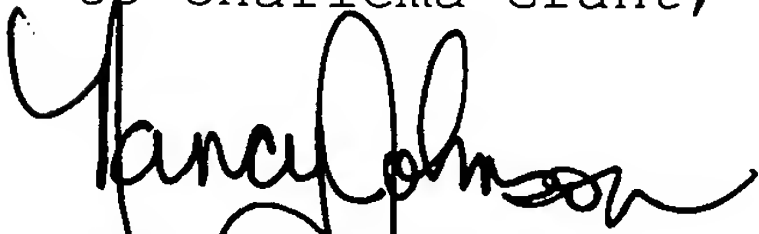
In view thereof, it is concluded that the determination of patent term adjustment at the time of the mailing of the Notice of Allowance is 438 days.

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application is being forwarded to the Office of Data Management for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and

for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to Charlema Grant, Petitions Attorney, at (571) 272-3215.

A handwritten signature in black ink, appearing to read "Nancy Johnson", written over the typed name.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

enc: PAIR screen for U.S. Application No. 10/659,620

PTA Calculations for Application: 10/659620

Application Filing Date:	09/10/2003	PTO Delay (PTO):	519
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	81
Post-Issue Petitions:	0	Total PTA (days):	438
PTO Delay Adjustment:	0		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
68	11/23/2007	MAIL NOTICE OF ALLOWANCE			
67	10/21/2007	ISSUE REVISION COMPLETED			
66	11/21/2007	DOCUMENT VERIFICATION			
65	11/21/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
64	11/21/2007	NOTICE OF ALLOWABILITY			
63	09/18/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
62	09/18/2007	REFERENCE CAPTURE ON IDS			
61	09/18/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
60	10/16/2007	DATE FORWARDED TO EXAMINER			
59	09/18/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
58	10/16/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
57	10/16/2007	CASE DOCKETED TO EXAMINER IN GAU			
56	09/18/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
55	09/18/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
54	07/16/2007	FINISHED INITIAL DATA CAPTURE			
53	06/25/2007	EXPORT TO INITIAL DATA CAPTURE			
52	06/22/2007	MAIL NOTICE OF ALLOWANCE			
51	06/22/2007	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
50	06/21/2007	ISSUE REVISION COMPLETED			
49	06/20/2007	DOCUMENT VERIFICATION			
48	06/20/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			

47	06/20/2007	CASE DOCKETED TO EXAMINER IN GAU			
46	06/15/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
45	06/20/2007	NOTICE OF ALLOWABILITY			
44	06/20/2007	DATE FORWARDED TO EXAMINER			
43	06/18/2007	AMENDMENT AFTER FINAL REJECTION		28	35
42	06/14/2007	DATE FORWARDED TO EXAMINER			
41	06/11/2007	AMENDMENT AFTER FINAL REJECTION			
40	06/11/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
39	05/31/2007	MAIL ADVISORY ACTION (PTOL - 303)			
38	05/29/2007	ADVISORY ACTION (PTOL-303)			
37	05/17/2007	DATE FORWARDED TO EXAMINER			
36	05/15/2007	AMENDMENT AFTER FINAL REJECTION			
35	02/21/2007	MAIL FINAL REJECTION (PTOL - 326)			
34	02/16/2007	FINAL REJECTION			
33	01/13/2007	DATE FORWARDED TO EXAMINER			
32	12/20/2006	RESPONSE AFTER NON-FINAL ACTION		32	30
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30	08/18/2006	MAIL NON-FINAL REJECTION			
29	08/17/2006	NON-FINAL REJECTION			
28	03/25/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
27	06/17/2006	DATE FORWARDED TO EXAMINER			
26	06/12/2006	RESPONSE TO ELECTION / RESTRICTION FILED		21	21
25	06/02/2006	MAIL NOTICE OF INFORMAL OR NON- RESPONSIVE AMENDMENT			
23	05/22/2006	MISCELLANEOUS INCOMING LETTER			
22	05/31/2006	DATE FORWARDED TO EXAMINER			
21.1	05/22/2006	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
21	05/22/2006	RESPONSE TO ELECTION / RESTRICTION FILED			
20.7	03/25/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
20	03/25/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
19	12/13/2004	MISCELLANEOUS INCOMING LETTER			
18	04/13/2006	MAIL RESTRICTION REQUIREMENT	519		-1

17	04/12/2006	REQUIREMENT FOR RESTRICTION / ELECTION			
16	01/31/2006	CASE DOCKETED TO EXAMINER IN GAU			
15	05/18/2005	MISCELLANEOUS INCOMING LETTER			
14	01/26/2004	REFERENCE CAPTURE ON IDS			
13.7	01/26/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
13	01/26/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
12	02/22/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
11	02/22/2005	CASE DOCKETED TO EXAMINER IN GAU			
10	12/03/2003	APPLICATION RETURN FROM OIPE			
9	12/03/2003	APPLICATION RETURN TO OIPE			
8	12/03/2003	APPLICATION IS NOW COMPLETE			
6	12/03/2003	APPLICATION DISPATCHED FROM OIPE			
5	12/03/2003	APPLICATION IS NOW COMPLETE			
4	11/22/2003	CASE CLASSIFIED BY OIPE			
3	11/22/2003	CLEARED BY OIPE CSR			
2	10/29/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	09/10/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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